

1 Christopher Campanella  
2 309 Phillips Road  
3 Valley Falls NY 12185

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

AUG 31 2010

4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF NEW YORK

LAWRENCE K. BAERMAN, CLERK  
ALBANY

6  
**Christopher Campanella**

Plaintiff,

vs.

**AURORA LOAN SERVICING**

Defendant

Case # 10-CV-0685-LEK-DRH

**MOTION TO STRIKE  
DEFENDANTS ANSWER AS  
UNTIMELY**

Date: 8/31/10

7  
8 PLAINTIFF'S MOTION TO STRIKE

9 1. Plaintiff is: Christopher Campanella , 309 Phillips Road Valley Falls NY 12185, and  
10 defendant is: AURORA LOAN SERVICING.

11 2. On June 11th, plaintiff filed with the court an ORIGINAL COMPLAINT. On June 21,  
12 2010 defendant was served with a summons and a copy of plaintiff's complaint by  
13 and through the United States Marshal Service. Defendant did not file a responsive  
14 pleading or otherwise defend the suit.

15 3. On July 20<sup>th</sup>, Plaintiff filed a Motion For No Answer Default

16 4. On July 20<sup>th</sup>, Clerk of the court accepted it into the record, but no signature was offered  
17 in favor or against by a clerk or a judge.

18 5. On July 26<sup>th</sup>, Defendant entered an Acknowledgement of Service. Then followed the  
19 Acknowledgement up with a motion to dismiss on August 12, 2010.

6. Defendants answer is untimely, and must be stricken from the record. The record reflects the Plaintiffs Motion for No Answer Default, and his intention to notify the court of the Defendants failure to respond.

7. Plaintiff would like the matter of No Answer Default to be ruled upon before moving forward with this case, as the necessity to respond to the Rule 12 Motion may be Moot.

PRAYER

8. Plaintiff Requests the Following:

a. Defendants entire Answer be stricken from the record.

b. Court will direct the Defendant to properly motion/petition the court to lawfully address the entry of No answer Default.

9. IN THE INFERENCE

a. Plaintiff requests reasoning as to why the Clerk and/or Court had not addressed the Plaintiffs Motion For No Answer Default. Secondly, it is questioned as to why the Clerk offered an extension of time. Clerk may have acted outside of their authority to grant such an extension. Plaintiff, not being learned in law may not understand the intricacies to the Federal Court System, and offers that this may be an oversight, and easily rectifiable. If Plaintiff is misunderstanding the docket entry information, it is requested that an explanation be granted so as to not cause any further delay from either party.

b. Should this Motion to strike be denied, Plaintiff is including with this motion, a Response to the Rule 12 Dismissal offered by Defendant.

Respectfully Submitted,

  
Christopher Campanella